

## PROHIBITING THE USE OF DISCRETIONARY CLAUSES

Discretionary clauses give insurance companies the unrestricted authority to interpret the terms of their policies, giving insurers the power to decide who gets paid and who doesn't. They also provide the legal cover to win most lawsuits in which policyholders sue over unpaid claims.

The National Multiple Sclerosis Society strongly supports prohibiting the use of discretionary clauses and believes this is critically important to all Utahns.

### Impact on Individuals Living with MS

Multiple sclerosis (MS) is a chronic, progressive disease of the central nervous system. The unpredictable nature of the disease can be a major challenge. Most people with MS live a normal life span, though they face increasing limitations over time. For others, the onset of symptoms can be rapid and severely impact their daily life.

David Rankin, whose story is at right, has not only dealt with the progressive symptoms of MS, but also the challenge of receiving due benefits. He and his wife, Deborah, battled with Liberty Mutual after David's claim for long-term disability was denied. David's cognitive and physical symptoms prevented him from working, and the couple pursued a lawsuit to settle the dispute. Eventually, the Rankins won their case, but the financial and emotional toll was significant and lasting.

MS is an expensive disease. The high cost of disease-modifying drugs and other treatments mean that, even with insurance, patients may still spend a substantial portion of their income on co-pays and deductibles. To add to this burden the possibility of being denied benefits by an insurer based on a discretionary clause is simply unfair. The National Association of Insurance Commissioners has taken a stand against these clauses in insurance policies, calling them inequitable, deceptive, and misleading to consumers.

Moreover, we believe the financial and emotional toll it takes on families and individuals is significant and damaging.

A ban on discretionary clauses will level the playing field for Utahns and help prevent insurers from making unfair decisions on whether to pay out claims.

In 2006, I had a good job with a good salary. When I was diagnosed with MS I was offered the choice of short term disability status or being terminated. I chose to take the disability. After that I went to long-term disability. I was forced to leave my job for medical reasons. I am now no longer able to work.

After 6 months, my long-term disability was cut off. There was language in my policy—a discretionary clause—that allowed my insurance company to reject my claim, based on the evaluation of a company physician in Rhode Island whom I'd never met.

Our insurance company claimed the evidence of my mental capacity being affected by MS was inconclusive, even though I had qualified for SSDI. My wife and I had to enlist legal help to address the conflict. We lost thousands of dollars along the way and spent all of our savings and retirement accounts. It took 6 months of legal action before the long-term disability was allowed again.

**Please** ensure that discretionary clauses can never hurt another family.

-David Rankin

